

Senate Bill 391

By: Senators Unterman of the 45th and Hill of the 4th

AS PASSED SENATE

**A BILL TO BE ENTITLED
AN ACT**

To amend Code Section 17-7-130 of the Official Code of Georgia Annotated, relating to proceedings upon plea of mental incompetency to stand trial, so as to revise and add definitions; to provide for certain children found incompetent to stand trial; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Code Section 17-7-130 of the Official Code of Georgia Annotated, relating to proceedings upon plea of mental incompetency to stand trial, is amended by revising subsections (a) and (b), paragraph (1) of subsection (d), and subparagraph (d)(2)(B) as follows:

"(a) As used in this Code section, the term:

(1) 'Child' means a person under the jurisdiction of the superior court pursuant to Code Section 15-11-28.

(2) 'Committing court' means the court which has jurisdiction over the criminal charges against the defendant.

(3) 'Developmental disability' shall have the same meaning as set forth in paragraph (8) of Code Section 37-1-1.

~~(2)~~(4) 'Inpatient' shall have the same meaning as in paragraph (9.1) of Code Section 37-3-1; provided, however, that as applied to a child for purposes of this Code section, the term shall mean a child who is mentally ill or has a developmental disability and is in need of involuntary placement.

~~(3)~~(5) 'Nonviolent offense' means any offense other than:

(A)(i) Murder;

(ii) Rape;

(iii) Aggravated sodomy;

(iv) Armed robbery;

(v) Aggravated assault;

- (vi) Hijacking of a motor vehicle or an aircraft;
 - (vii) Aggravated battery;
 - (viii) Aggravated sexual battery;
 - (ix) Aggravated child molestation;
 - (x) Aggravated stalking;
 - (xi) Arson in the first degree and in the second degree;
 - (xii) Stalking;
 - (xiii) Fleeing and attempting to elude a police officer;
 - (xiv) Any sexual offense against a minor; or
 - (xv) Any offense which involves the use of a deadly weapon or destructive device;
- and

(B) Those felony offenses deemed by the committing court to involve an allegation of actual or potential physical harm to another person.

~~(4)~~(6) 'Outpatient' shall have the same meaning as in paragraph (12.1) of Code Section 37-3-1, provided that ~~the~~:

(A) As applied to a child for purposes of this Code section, the term shall mean a child who is mentally ill or has a developmental disability and is in need of involuntary placement; and

(B) The court determines that the defendant meets the criteria for release on bail or other pre-trial release pursuant to Code Section 17-6-1.

(b) Whenever a plea is filed that a defendant in a criminal case is mentally incompetent to stand trial, it shall be the duty of the court to cause the issue of the defendant's mental competency to stand trial to be tried first by a special jury. If the special jury finds the defendant mentally incompetent to stand trial, the court shall retain jurisdiction over the defendant but shall transfer the defendant to the Department of Behavioral Health and Developmental Disabilities and if the defendant is a child, the department shall be authorized to place such defendant in a secure hospital or secure community facility designated by the department; provided, however, that if the defendant is charged with a misdemeanor offense other than as included in subparagraph ~~(a)(3)(A)~~ (a)(5)(A) of this Code section or a nonviolent offense, the court may, in its discretion, retain jurisdiction over the defendant, and may allow evaluation to be done on an outpatient basis by the Department of Behavioral Health and Developmental Disabilities. If the court allows outpatient evaluation and the defendant is in custody, the court may release the defendant in accordance with the provisions of Code Section 17-6-1, et seq."

"(1) ~~Refer~~ If the defendant is not a child, refer the case to the probate court for commitment proceedings pursuant to Chapter 3 or 4 of Title 37, if appropriate and if the charges are dismissed for any reason; or"

“(B) If the defendant is found to meet the criteria for involuntary civil commitment as an inpatient or outpatient, the judge may issue an order committing the defendant; provided, however, that if the defendant is a child, the Department of Behavioral Health and Developmental Disabilities shall be authorized to place such defendant in a secure hospital or secure community facility designated by the department.